

REMARKS/ARGUMENTS

Claims 1-10 remain in this application. Claims 1, 2, 4, 5 and 9 have been amended. Claim 5 has been amended to delete the repeated subject matter. Claim 4 has been amended to clarify that the horizontal loading arm mounting axis is located above the rear wheels and not substantially above a plane containing an uppermost part of the bonnet structure. The remaining claims have been amended to place the claims in better format, without changing the scope of the claims.

In view of the amendment to claim 5 eliminating the repeated subject matter, it is requested that the objection be withdrawn. In view of the amendment to claim 4, it is submitted that claim 4 is now definite and is requested that the rejection of claim 4 under 35 U.S.C. §112, second paragraph, be withdrawn.

Applicant respectfully traversed the rejection of claims 1-7, 9 and 10, both as filed and as amended, under 35 U.S.C. §102(b) as being anticipated by Brown patent 5,618,156. Brown discloses an excavating machine in Figs. 1-13 having a center axis extending in a vertical center plane 2 (column 4, lines 21-23). A telescopic loading arm 21 is mounted on brackets 22 to pivot in the vertical center plane 2. As seen in Figs. 1, 2 and 7, the pivot point for the loading arm is to the rear of and above a rear portion of the rear wheels. An engine 7 is mounted to one side of the plane 2 and an operator's cab 8 is mounted to an opposite side of the plane 2. Brown has a second embodiment in Figs. 14 and 15 in which the operator's cab is mounted above the central axis of the machine and the loading arm also is mounted above the central axis forward of the operator's cab.

Claim 1, the only independent claim, specifically requires an operator's cab mounted "to the rear end of the body, generally centrally of the body between the sides of the machine". Claim 1 further requires an engine mounted towards the front end of the body "generally centrally of the body between sides of the machine". Finally, claim 1 requires that a loading arm be mounted towards one side of the machine and at least over a range of operating positions extending alongside the cab.

Such a structure is not disclosed in Brown which in the Figs. 1-13 embodiment has the loading arm located on the center and both the engine and the operator's cab spaced on opposite sides of the center, and in Figs. 14-15 has the loading arm and cab both located along the center axis and the engine spaced to one side of the center axis. Without a teaching in Brown of the structural arrangement which is clearly set out in the rejected claims 1-7, 9 and 10, it is submitted that the claims cannot be anticipated by Brown.

Claim 3 further recites that the loading arm mounting axis is located above the rear wheels axis. In Figs. 1-13 of Brown, the loading arm mounting axis is located above and to the rear of the rear wheels axis, and in Figs. 14-15 is located well forward of the rear wheels axis.

Claim 7 requires that a loading tool be located generally central of the front of the central bonnet structure, while the loading arm on which the tool is mounted is located to a side of the machine. Such a structure is not shown in Brown, where the loading arm is always positioned above the central axis.

In view of the clear difference between applicant's claimed excavating and loading machine and the machine taught in Brown, it is submitted that claims 1-7, 9 and 10 are not anticipated by Brown and that the rejection under 35 U.S.C. §102(b) must be withdrawn.

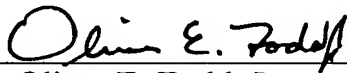
Applicant respectfully traverses the rejection of claim 8 under 35 U.S.C. §103(a) as being unpatentable over the Brown patent in view of Allen patent 5,606,809. Allen is cited for its disclosure of an excavating arm mounted on the rear of an excavating and loading machine. Claim 8 is dependent on claim 1 and is patentable over Brown for the reasons discussed above. Since Allen fails to disclose a machine of the type claimed in which the engine and the operator's cab are generally central of the body between sides of the machine and the loading arm extends towards one side of the machine at least over a range of operating positions alongside the cab and bonnet structure, Allen fails to cure the deficiencies of Brown. Consequently,

claim 8 is not unpatentable over Brown and Allen and the rejection under 35 U.S.C. §103(a) should be withdrawn.

It is further submitted that applicant's claimed machine is not obvious over Brown, either alone or in combination with Allen. Although the prior art may show individual elements of the claimed invention operating in different machines, the combination of the claimed elements gives rise to a unique, patentable geometry. The claimed machine provides a combined excavating and loading machine of great versatility, which is capable of performing a variety of excavating and loading operations. Unlike prior art combined excavating and loading machines of the type shown in Brown and Allen, the combination with the side mounted loading arm provides substantially better loading performance.

Applicant respectfully requests that the rejections be withdrawn and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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